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HOW SHALL THE PRESIDENT BE ELECTED?

THE clause of the Constitution of the United States that prescribes the manner in which the President and Vice-President shall be elected, was adopted only a short time before the adjournment of the convention. It was a substitute for a provision that had, in principle, already received the approval of the body among its earliest acts, and had been re-affirmed in successive reconsiderations of the subject. Nobody can rise from a perusal of the journal of the convention without being thoroughly convinced that that original provision embodied the deliberate judgment of the majority (we may say, perhaps, of the entire body, since the votes were occasionally unanimous) as to the wisest mode of disposing of this difficult subject. At the opening of the convention, late in May, 1787, a series of resolutions was introduced by Edmund Randolph, of Virginia, which formed the principal text of a long-continued discussion of the provisions that the new Constitution ought to embrace. The first clause of one of these was in the following words:

“Resolved, That a national executive be instituted, to be chosen by the national legislature for the term of years.”

Four days later this was adopted, the blank having been filled with the word "seven." Two months later still, in the first draft of the Constitution reported from committee, this provision re-appeared in the following form :

"The executive power of the United States shall be vested in a single person. . . . He shall be elected by ballot by the legislature. He shall hold his office during a term of seven years ; but he shall not be elected a second time."

Another month elapsed, in the course of which the details of the reported Constitution were critically examined ; and on the last day of that month, all matters that had not been finally disposed of, among which was the manner of electing a President, were referred to a committee consisting of one member from each State. It was on the recommendation of this committee that the provision on this subject was adopted which was finally incorporated into the Constitution of 1787—a provision which, with a slight modification not affecting the mode of election, still stands in the twelfth amendment. And it is the unfortunate change thus made in the text of the Constitution as first drawn up which has entailed upon us the perpetually recurring scenes of angry political controversy and wild public excitement that have marked the close of each presidential term. So grave have become these evils, that peaceful citizens are beginning to tremble at the approach of a presidential election ; and men of business hold their breath and curtail their operations, as experienced mariners take in sail in anticipation of a coming hurricane. No consequence could have been more wholly unlooked for than this, by the authors of the provision that has proved to be so mischievous. On the other hand, the plausibility of the proposition to confide the selection of a chief magistrate to a council composed of "the wisest, virtuous, discreetest, best" of the nation, seems momentarily to have captivated the imaginations and disturbed the judgments of those sages of the Revolution to such a degree, that they actually believed they should be able by this expedient to lift this purely mundane question to a region far above the influence of vulgar human passion. Singularly enough, too, the contemporary generation of their countrymen seems to have accepted this part of their work at the valuation put upon it by themselves ; for, while every other provision of the Constitution

was the subject of very sharp and even condemnatory criticism in one quarter or another, and the acceptance of the entire instrument, long doubtful, was finally secured only with great difficulty, this seems to have received some moderate commendation from those who noticed it at all. In No. 68 of "*The Federalist*," Mr. Hamilton expresses himself in these words :

"It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. . . . It was equally desirable that the immediate election should be made by men capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation. It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate who was to have so important an agency in the administration of the government."

This was the theory ; the contrast between the anticipation and the experimental result is almost ludicrous. Had there never been any such thing as political parties in the country, the practice might have corresponded more nearly with the expectation. During Washington's time there were no parties, and at each election in which he was a candidate every Elector gave him his vote. Party nominations were first made in 1800, and the Electors, however well qualified "to analyze" in candidates "the qualities adapted to the station," and to act with "a judicious combination of all the reasons that were proper to govern their choice," very quietly shut their eyes, declined to take the trouble of analysis, and voted for their party nominees. And so have their successors continued to do in every election since. The members of the Electoral College are thus reduced to the ridiculous attitude of mere automata. Ever since 1800 they have exercised no more important or dignified function than that of mechanically depositing ballots already prepared for them. It is evident, therefore, that an amendment of the Constitution is to be desired, if it were only to rid us of this electoral rubbish.

But the Electoral College, useless as it has become as a piece of our political machinery, is at least harmless ; and an amendment that should stop with its abolition would do nothing to

avert those grave evils and even serious dangers which, as experience has proved to us, are of unavoidable recurrence, under our present system, in every closely contested presidential struggle. As examples of these evils may be enumerated the long-continued agitation and excitement of the public mind persisting for months together, embarrassing interruption to the regular operations of business, protracted anxiety on the part of multitudes who have, or imagine that they have, important interests at stake in the contest, attempts to corrupt or intimidate voters or to exclude them from the polls, the fabrication and circulation of false statements on the eve of election, and frauds upon the ballot-boxes. To these may be added the disgraceful practice of trading votes, frequent among the low political intriguers of our larger towns — transactions known in the slang of their own vulgar circles as “deals,” in which a manager accepts one of the candidates of the opposing party for the sake of an equivalent in votes for another on his own ticket; and, finally, the degradation of the political press, which lends itself to the lowest abuse of opposing candidates.

Still another very grave evil is connected with these contests, to which, as it seems to me, attention has not been sufficiently directed, and that is the obstruction that the question of the presidential succession interposes in the way of Congressional legislation. Owing to this, the second Congress in every presidential term is to a great degree paralyzed for usefulness. During the first session of that Congress, every measure of great and general interest is invariably thrust aside, on the ground that a presidential election is impending, and that any action might prejudice the prospects of the party responsible for it. The second session is equally unproductive, for the reason that a presidential election has just taken place, and all such questions must be left to the new administration. Thus, although in the forty-eighth Congress, still in existence, there was a majority in favor of some reform of the oppressive tariff under which the country is suffering, and though the prevalence of this feeling was made manifest in the choice of Speaker, yet the shadow of the approaching presidential contest benumbed the spirit of both parties alike, and deprived them of the courage of their opinions. Even so moderate a measure as that proposed by Mr. Morrison was deemed to involve too serious a hazard, and it failed for lack of support from many who approved it in

their hearts. We are told that we have nothing better to expect during the present session, because there is not time, in the small lease of life that remains to Congress, to mature a measure of such importance. Time is not the thing that is wanting, but courage; and it is a very serious fact, which our people would do well to ponder, that, owing to the reflex action of our vicious system of presidential elections, the national legislature, for two years out of every four, is mentally incapacitated for the discharge of its proper functions.

These are grave evils, but graver still are those angry disputes that have arisen, and are liable continually to arise, over the final count, resulting from real or asserted falsification of the Electoral vote, or from conflicting returns and duplicate certificates from the same States. The danger is that the disappointed party may appeal to open violence in support of their claims, and plunge the nation into civil war. A catastrophe like that was near befalling us in 1876, from which we were saved mainly by the moderation and patriotism of the Democratic candidate. With a defeated competitor as passionate and as self-willed as the soldier President of 1828, the result might have been very different. And in the contest that has just ended, there were many who for a time believed we were very near a similar crisis, though with a pretext far less plausible. If the electoral system is to be retained in form as provided in the Constitution, legislation is necessary to secure the final settlement of controversies in regard to the result of the election in each State, by judicial proceedings within the States themselves; so that the certificates forwarded to Washington shall be conclusive, and nothing shall remain for Congress to do but to sum up the returns and announce the names of the successful candidates. Very judicious propositions to this effect have been laid before Congress from time to time, without receiving the attention they deserved; as, for example, the joint resolution offered in the Senate by Mr. Eaton, of Connecticut, in November, 1877, and the House bill of Mr. Hewitt, of New York, introduced in February, 1882. Better than this, however, the Electors might be appointed directly by the State legislatures. New York, Delaware, South Carolina, and Vermont appointed them in this manner down to 1824; Georgia did the same, except in the single election of 1796, when she resorted to the general ticket; and Connecticut maintained the practice down to 1820. Other States

employed this alternately with other methods. Massachusetts, for example, employed the district-ticket system in the first three elections, legislative appointment in the fourth, the general ticket in the fifth, the legislative in the sixth, the district system in the seventh, the legislative in the eighth, the district system in the ninth and tenth, and she has employed the general ticket ever since. New Jersey practiced appointment by legislature down to 1816, and South Carolina till 1868, in which two years these States resorted severally to the method of general ticket.*

This plan, however, which the fact of so general and so long-continued persistence in it proves to have nothing about it objectionable, and which obviates most of the evils attendant on the mode of election now universally practiced, is nevertheless objectionable equally with that, in the respect that it throws the entire electoral vote of the State in favor of one party, when it may happen that the numerical difference between the two great parties is insignificant, and in case there are minor parties in the field, the prevailing party may be in a minority. This happened in the late election in New York, in which Mr. Cleveland's plurality was only about one thousand, and he was actually in a minority of more than forty thousand. In 1844, the fate of the entire election was determined by the vote of New York; and the vote of New York was thrown for a candidate that was in a popular minority in the State of more than ten thousand votes. The contest was between Mr. Polk and Mr. Clay. The issue was annexation of Texas and extension of slavery on the one hand, and anti-annexation and free-soil on the other. Mr. Clay was anti-annexation and anti-extension, but he was a citizen of a slave State, and he was not an abolitionist. The extreme Free-soilers, therefore, nominated James G. Birney as a third candidate, and the fifteen thousand votes they gave to him, which would otherwise naturally have gone to Mr. Clay, lost New York to the latter by about five thousand votes, and thus gave the election to his competitor. In the last election, had the electoral vote of New York been divided between the parties in the proportion of their voting strength, Mr. Cleveland would have received only seventeen votes, and Mr. Blaine would have received seventeen, while Mr. St. John and General Butler would have had one vote each. It is evident

* I am indebted for these particulars to my young friend, Charles A. O'Neill, Esq., of this city, who has made a study of the subject.

that the application of this principle in all the States might sometimes have the effect to reverse the decision of the Electoral College as given under the provisions of the Constitution; and in fact that it must do so whenever the defeated candidate has heavy popular majorities in the States that support him, while his competitor succeeds in others by light ones.

Presidents have come into power with a popular majority against them. This was true in the election of 1844, when Mr. Polk's vote was 24,000 below that of the united opposition. It was true in the case of General Taylor in 1848, when Mr. Van Buren, the nominee of the Free-soilers, drew off a very heavy body of partisans, so that the successful candidate was in a popular minority of 151,000. In 1856 Mr. Buchanan was elected, though outnumbered in the popular vote by 377,000. Mr. Lincoln came into the Presidency in 1860 (there being three opposing candidates), though failing of an absolute majority by a number nearly as large — 354,000. In 1876 the honesty of the popular vote in several of the States was disputed, but the majority against the successful candidate, Mr. Hayes, was apparently not far from 250,000.

In the election of Electors by State legislatures, the injustice of throwing the solid vote of the State for one party only might be obviated by applying the principle above applied to the popular vote, and dividing the Electors between the parties in the proportion of their strength in the legislature itself. Or, according to a plan suggested some years since by the present writer, the lower house of each legislature might resolve itself into committees, equal in number to the number of Congressional districts in the State, each committee composed of all the delegates from a particular Congressional district and having power to choose one Elector; the Senatorial Electors to be elected by the State Senate, or dispensed with altogether. Though this suggestion was not received with favor, the plan it proposes is entirely feasible, and it is obviously more just than that which was long and very generally practiced, of choosing the entire Electoral College of each State by the entire legislature.

In proceeding to consider whether it is possible to devise any remedy for the evils that environ this difficult question, it is worth while to look back to the proceedings of the Convention of 1787, and inquire what were the expedients then suggested for securing, peacefully and fairly, the appointment of a chief

executive. We find that there were eleven, which may be stated as follows, the name of the proposer being annexed in each case, except where the record is silent in regard to it:

1. By the national legislature. Edmund Randolph, of Virginia.
2. By the State executives. Elbridge Gerry, of Massachusetts.
3. By the Congress constituted as under the articles of Confederation. William Patterson,* of New Jersey.
4. By electors to be chosen by electors to be chosen by the people. Alexander Hamilton, of New York.
5. By electors to be chosen by the people of the States (general ticket).
6. By electors to be chosen by the people in districts. James Wilson, of Pennsylvania.
7. By electors to be appointed by the State legislatures. Oliver Ellsworth, of Connecticut.
8. By electors to be taken by lot from the national legislature. James Wilson, of Pennsylvania.
9. By the national legislature, each State having one vote.
10. By the direct vote of the whole people.
11. By electors to be chosen for each State, in such manner as the legislature thereof may direct. Committee of August 31, 1787. Adopted.

To these may be added the following propositions more recently made:

12. Direct election by the people, in districts, without personal electors. Senator O. P. Morton, of Indiana, in 1873.
13. By the people of the States, in general ticket, the electoral votes to be divided in proportion to the voting strength of parties. Proposed above.
14. By State legislatures, the electoral vote to be divided in proportion to the voting strength of parties in the same. Proposed above.
15. By the lower houses of State legislatures in committees composed severally of the delegates from the several Congressional districts. Proposed by this writer in 1877.

I am compelled to avow it as my most profound conviction that the only assured security for the future possible to us against the formidable dangers that surround the question, is to be found in a return to the plan of placing the election of the President in the hands of the national legislature, which commended itself so strongly to the wisdom of the fathers.

The members of Congress possess necessarily all the qualities of fitness that are possible to be looked for in any electoral college; although, as the system works at present, it is of no

* Mr. Patterson proposed a revision of the articles of Confederation rather than a new constitution.

consequence whether Electors are fit or not. Congressmen represent, as the Electors of the present system do not, the people of limited districts, and therefore, when political opinion in a State is divided, the Congressional delegation of the State is divided also, and will not commit the injustice that is now invariably committed, of throwing the entire vote of the State in favor of one party. But in an election by Congress the quality of fitness in the electors would have a significance that it has not under the present system, for the Members of Congress, if not in all cases accomplished statesmen, are nevertheless much more familiar with affairs of state, and much more competent to act on and decide political questions than the average citizen. It may be said that the caucus would replace the convention; but the caucus of the dominant party will in such case become itself the electoral body. Congress affords us an Electoral College in which the theory of the fathers of the Constitution is a reality. Moreover, since it would be impossible, by any process, to bring together an equal number of men more capable of representing the party interests or the party intelligence, it is certain that we cannot expect from any other electoral body, however constituted, a more judicious or satisfactory appointment of a President.

In the cases in which, under the Constitution, an election by the Electoral College fails, examples of which we have had in 1800 and 1824, the choice of President already devolves upon one of the houses of Congress. Had every election from 1788 downward been decided by Congress, especially with the exclusion of the provision that requires the vote to be taken by States, in general the same parties that were actually successful would have prevailed. Whenever a case like that of 1800 or that of 1824 occurs, it happens, under the Constitution as it stands, that the election is made by an outgoing Congress. This, in some points of view, is advantageous, and in others the reverse. It is advantageous in that it finds members free from liability to be influenced by considerations as to their own reëlection, a new Congress having been already chosen, and a new term being about to begin. It is an advantage also, that, having been elected more than a year before, they have not been chosen merely *ad hoc*, but their selection has been determined by general considerations of public policy; so that, while they would continue generally to represent the bias of political

opinion among their constituents, they would be untrammelled by any special instructions or pledges. It is a disadvantage, however, that, in case of the occurrence of such a remarkable and sudden change of public opinion as we have occasionally seen, the new Congress might not be politically in harmony with the old, nor, by consequence, with the executive elected by it.

Should the Constitution be so amended as to throw the presidential election into the hands of Congress, it would, therefore, be well to adjust the limitations of the terms of service so that the election may be made by an incoming Congress, and be in fact its first duty after its own organization. The President would thus be secure of a sympathetic legislature, and we should be spared the conflicts that we have seen so often between coördinate departments of our Federal government. Curiously enough, these conflicts have been more persistent and more bitter between Congress and the Presidents that have received the office through the vice-presidency than with those that have been directly chosen. The pitiable histories of the administrations of John Tyler, Millard Fillmore, and more strikingly still of Andrew Johnson, illustrate this remark,—a remark which, but for the prudence and good sense that have distinguished the official life and conduct of our present excellent chief magistrate, might seem to indicate a law. It is greatly to be hoped that, under an improved system of election, whatever it may be, there will be no more successions to the presidency by inheritance. In such cases, at least, let Congress fill the vacancy. Though the President may die, Congress is a body that never dies, and may make a new election without delay. Should even such a calamity befall as the death of the President during the recess, Congress might be called together by telegraph, and re-assemble within a week. A Vice-President would be no longer necessary. The President *pro tem.* of the Senate might also be President *pro tem.* of the United States for the few days of unavoidable interregnum.

The contemporary republic of France has afforded us a felicitous illustration of the working of this principle. Three successive Presidents have been elected by the French Chambers without excitement or danger to the peace, and with the result of maintaining an executive in harmony with the legislative body. The parliamentary and ministerial government of Great Britain furnishes another example, which, in so far as the principle involved is concerned, is equally in point. The Commons do not

make the ministry, it is true, but they unmake it; and all the power of the Queen is not sufficient to make a new one unacceptable to them. And there is not a government in the world in which the transfer of power from one party to another is accomplished more peacefully or more satisfactorily to the people that live under it than that of the British Empire.

These reasons are conclusive with me; yet I am aware that the plan I propose is not likely to find general acceptance. The plan that will probably prove to be most popular, and, if we have any change at all, is most likely to be preferred, is that of election by the people directly. There is something about this plan well calculated to catch the popular fancy, and it will probably be claimed that it is more in harmony with the democratic principle than any other. Senator Morton, in his speech on the subject in the Senate in 1873, advocated this view with great eloquence, and in a manner well adapted to win the approval of the multitude, yet hardly likely to convince thinking men. The Senator's principal argument is this: that, in the choice of a chief magistrate, every citizen has a right to give his vote for the man of his choice; whereas, under our present system, he is compelled to vote for the choice of somebody else, or lose his vote altogether. We may admit this without being able to perceive the hardship. If the man whom an individual voter prefers is not also the preference of several millions of his countrymen besides, his vote is of no avail, and he might as well not cast it. In other words, votes are not worth the paper they are printed on, without organization and united action among the voters. If, by an amendment of the Constitution, the election should be made direct, party conventions will continue to name candidates precisely as they do now, and individuals will continue to cast their votes as completely under dictation as they do at present, unless, out of mere caprice, they choose to throw them away. Senator Morton's argument, therefore, is the flimsiest sort of fallacy.

But Senator Morton argued further that the electoral system operates unjustly to the whole people, in the respect that under it a candidate may fail of election, although having a majority of the popular vote in his favor. This indeed is true, and it has actually happened. But, on the other hand, a popular majority may often be due to a sectional majority, and even to a majority of a comparatively small section, overpowering adverse, though inferior, majorities in the much larger portion of the Union.

To illustrate: in the late election, the single State of Texas gave for the Democratic candidate a plurality of about 135,000 votes over his principal competitor. New York gave a plurality in the same direction of only about 1000. The case is conceivable in which thirty-seven States should give pluralities of 1000 each to a candidate of one and the same party, while Texas should again give 135,000 for the other. In a direct election, Texas, in such a case, would give the nation a chief magistrate by a popular majority of nearly 100,000. It will easily be seen that the plan of electing Presidents by direct popular vote would soon extinguish the last vestiges of State independence; and though to many this result might not be unacceptable, it ought to be regarded with apprehension by the party that, for nearly a century, in its profession of faith, has given to "the resolutions of 1798 and 1799" a place a little above the scriptures of the Old and New Testament.

But the conclusive objection to the plan of direct election is the fact that it leaves all those grave evils that have hitherto attended our quadrennial presidential contests wholly unremedied, if it is not in fact calculated to aggravate them. The disturbance of the public quiet, the conflicts at the polls, the practices of intimidation or corruption of voters, the bargainings, or "deals" between local political managers, the degradation of the press and consequent demoralization of public sentiment, the obstruction to legislation, and all the other evils that attend our elections now would continue unchecked. Only one conceivable advantage can attend the change, but it is one of some importance. A great State, with a majority of, let us say, 100, would no longer be able to overwhelm half a dozen smaller ones with a joint majority of more than 100,000.

F. A. P. BARNARD.

IN the convention that framed the Constitution of the United States nearly a century ago, there was a wide difference of opinion as to the manner of choosing the national Executive. Propositions were made that the election should be by the two houses of Congress; by Electors chosen by the people in separate districts throughout the States; by the executives of the States; by the legislatures of the States; by Electors appointed by

the legislatures of the States; by Electors appointed as the legislatures may direct; by Electors chosen by lot from the Senators and Representatives in Congress; by the Governors of the States, with the advice of their councils; and by direct vote of the people in each State. All of these plans had their supporters, and several of them were adopted only to be reconsidered and defeated. That for election by the two houses of Congress was three times carried, once unanimously, and as often recalled and set aside. Finally, the mode of choice by Electors appointed in such manner as the legislature of each State may direct, the number of Electors to correspond with the representation of the State in Congress, prevailed. The main question was, whether the power should be with the people, or a remove from them. The opposition to the popular mode was strenuous and overwhelming, only one State, Pennsylvania, voting for it. Roger Sherman, of Connecticut, claimed that the people would never be sufficiently informed of the characters of men to vote intelligently for the candidates that might be presented. Charles Pinckney, of South Carolina, was afraid the people would be incited by designing and active demagogues. George Mason, of Virginia, declared that it would be as unnatural to refer the choice of a proper person for President to the people as to refer a trial of colors to a blind man. The extent of the country alone, he contended, would render it impossible for the people to have the requisite capacity to judge of the respective merits of candidates. Elbridge Gerry, of Massachusetts, said a popular election was radically vicious, as the ignorance of the people would put it in the power of some one set of men, dispersed throughout the Union and acting in concert, to deceive them and delude them into the election of an improper person. A cabal would certainly, in every instance, dictate the President, if the election was to be referred to the people. And so on to the end of kindred opposition from other members. The theory of the Electoral College, so called, as established, was, therefore: first, that the people could not be trusted to choose the Chief Executive; and secondly, that the Electoral College interposed between them and the election was to exercise independence, with superior knowledge and wisdom, in making the selection. At first the Electors were appointed by the State legislatures, and acted upon their own judgment. They were unanimous in electing and reëlecting George Washington

President, while at the same time voting for no less than fifteen different persons for Vice-President. The provision then was that each Elector should vote for two persons; that the one receiving the greatest number of votes, if a majority of the whole number of Electors, should be President; and that, after the choice of President, the one having the greatest number of votes of the Electors, even though not a majority of the whole, should be Vice-President. At the third election, in 1796, the Electoral College was divided between John Adams and Thomas Jefferson for the first office. The result was a vote of seventy-one for Adams and sixty-eight for Jefferson, and they thus became respectively President and Vice-President. At the next election, in 1800, the first organized movement to forestall the action of the Electoral College was made. A caucus of the friends of Mr. Jefferson in Congress put him in nomination for President, and when the Electoral College balloted the votes were found to be a tie between him and Aaron Burr, each having 73. The House of Representatives, after a warm and protracted struggle, elected Mr. Jefferson President, and Mr. Burr Vice-President. It was this electoral tie that induced the adoption of the amendment, still in force, that requires the Electors to ballot separately for President and Vice-President. After 1800, nominations were made by Congressional and legislative caucuses, which grew in strength until their controlling power was recognized and they were crowned "King Caucus." Another crisis came in 1824, when Andrew Jackson and John Quincy Adams were opponents. Neither had a majority of the electoral votes, as some were given to William H. Crawford and Henry Clay, while John C. Calhoun, having the requisite majority, was elected Vice-President. The House made Mr. Adams President. This ended the reign of King Caucus. The popular sentiment dictated the choice of Andrew Jackson over John Quincy Adams for President in 1828, by an electoral vote of 178 to 83; and the self-assertion of the people had been such that the Legislatures gradually relinquished the power of appointment of the Electors. In 1824, Delaware, Georgia, Louisiana, New York, North Carolina, and Vermont were the only exceptions, and in 1828 South Carolina stood alone, as it continued to stand down to the reconstruction of its State government after the close of the rebellion. In 1830 the first political national convention of delegates representing the people was held; and the holding of national nominating

conventions by the different political parties began in 1831-2, and has since continued, being now the firmly established usage. The people not only appoint the Electors directly by their votes, but they perform the very office which, in distrust of their intelligence and judgment, the Electoral College was created to fill, that of selecting the national executive. Beginning at the primary meeting and passing along through the intermediary conventions until the national party council is reached, they direct every movement made in the naming of candidates from among whom the President and Vice-President are chosen. The Electors vote as the expressed will of the people directs, and, under the unwritten law that has supplanted the letter of the Constitution as that instrument was drawn, are without volition. Such is the practice.

The ground upon which the Electoral system was based having long since crumbled away, the system itself should now follow. The conditions that existed in 1787 and caused the Constitutional Convention to reason and make provision as it did, have changed. The number of States has been trebled, the area of the country has been increased tenfold, and the population has been multiplied by fifteen. Yet, by the application of steam upon land and water, by the use of the electric telegraph, and by the revolutions of the power printing-press, all then unknown and undreamt of, distance of travel has been reduced, space in communication has been annihilated, and spread of intelligence has become universal; so that the minds of the sixty millions of population can be almost instantaneously informed and brought to consider any given proposition now, while a like result, with the four millions of population then, would have taken months, if, indeed, possible to be reached at all. The trouble to-day is not with the people, but with the Electoral College. Instead of the candidates for President and Vice-President not being known to the people, it is the Electoral College that is an enigma to them. It would be impossible to present any candidate without having a full history of his life and character spread by the public press before every citizen in every corner of the land within twenty-four hours after his nomination. It would be equally impossible, in the State of New York for illustration, to nominate candidates for Electors who would be known to all the citizens called upon to vote for them. Many people never have an

understanding of the working of the Electoral College, and every four years, as the Presidential election comes round, the public journals are called upon to instruct the risen as well as the rising generation in its mysteries. Some, even among the statesmen of the land, forget their knowledge of it, and confound others by their misunderstanding of its operations.

The Electoral College is not only without utility or value, to the end for which it was created, but it is a dangerous piece of machinery. How much it needs watching in some if not in all of its thirty-eight different parts, the election of eight years ago attests. And now, according to public report, the representatives of the party that won the election of November last have taken the precaution to cause duplicate copies of the Electoral certificates for Cleveland and Hendricks to be sent to the Speaker of the House of Representatives, outside the law, as a check on possible irregularities. It is a sufficient reason for doing away with the Electoral College that it is utterly useless. Its only legitimate function is to do over again what the people themselves do in appointing it. But the power it possesses and wields in the exercise of that function is open and liable to perversion, and therefore it is a standing menace to the integrity of Presidential elections. True, up to the present time it has not, through error or bribery, reversed the will of the people. The pitcher is never broken until the last time it goes to the well. Is it wise to maintain an intermediary that is superfluous at best, until it does some serious damage to call for its destruction? Even as the agency it is, it has obvious imperfections. No positive qualifications are required for an Elector, who may be a citizen or an alien, a man or a woman, an Indian or a Chinaman. There is a prohibition that no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector, and that is all. And the Elector is not only permitted but directed to vote by ballot. This is an anti-democratic provision, which may cause a blunder, and could be easily used to cover a crime. An agent of the people should never be permitted to act secretly in transacting their business, except in cases where the public safety may require. Especially should he never be allowed to cast a ballot in secret for them. What the people can do for themselves in making and administering their government they should not employ an agent to do; much less employ an agent

to do over again what they have already done, as in the case of the Electoral College.

In dispensing with Presidential Electors, no disturbing change need be made. Preserving the autonomy of the States and their proportions of power as measured by representation in Congress, the people of each State would vote for President and Vice-President upon a ballot, precisely as they now vote for Governor and Lieutenant-Governor, and with the same freedom of choice for each separately, which is denied them under the Electoral College system. The candidate receiving the highest number of votes for either office, would have certified for him the proportion belonging to the State — as, thirty-six for New York. The end of election by direct vote of the people is plainly seen and easily understood. The means to it can be readily devised. A uniform day of election, as at present, but different from that upon which State and local officers are chosen; immediate count of the votes after the close of the polls; prompt subsequent canvass by boards of final jurisdiction in all the States alike, and simultaneously; transmission of the returns by State certificate, and determination and proclamation of the result by duly established authority, whether it be Congress or some other tribunal, at Washington; — these are points of detail that can be provided for without difficulty. If to the direct vote of the people should be added provision for a term of six years, with ineligibility of the incumbent for reëlection, the improvement of the article of the Constitution relating to the election of the executive would be as complete as it is possible to make it.

WILLIAM PURCELL.

THERE can be no more fitting time to discuss the infirmities, or weigh the value of existing methods for the election of a chief magistrate than that which follows the subsidence of the excitement of the recent presidential election. It has been the fashion of late to criticise and condemn the Electoral College. The cure has always been an attempt at substitution. It is said of it that: It has departed in practice from the theory of its creation; it is a cumbersome and useless piece of machinery; it had its origin in a distrust of popular government, and stands

between the people and a free choice of their ruler; and it is full of danger. These criticisms are not altogether groundless; but their weight, as against the system, may well be questioned, and the system itself, as against any substitute yet proposed, may well challenge discussion.

It is true that the original idea of the Electoral College was a free choice of the President by Electors chosen, not on previous committals, but exercising after their appointment a deliberate unbiased judgment in casting a ballot for that man of all others in the republic most commending himself to such judgment of the Electors. The fathers expected that the result of the free deliberation of the College, or rather the resultant of the deliberations of the separate Colleges in the several States, would most surely bring into this high position the noblest and best equipped citizen. The practice, however, has come to be, that the Electors are now appointed because of their known preference for some particular individual for the office of President, whose character and fitness are discussed before the public months in advance, not to convince the man who is to be Elector, but to persuade the voter to cast his ballot for one already pledged. This change seems at first thought to be very much for the worse, degrading the College from a high and ideal function to a mere registering machine. But something may be said on the other side. Whatever may have been the dream of the fathers, political parties in this country were inevitable, and were sure to divide on the principles and policies of administration. This division was certain to manifest itself first and strongest in the choice of a chief magistrate. It is better in every way that the merits of this division should be debated before the people themselves in advance, rather than be pressed home upon the Elector between his election and his ballot for President. If he were at liberty to be swayed after his election, debates fierce and wild would attack him, and corruption and bribery would compass him about and beset his footsteps till his ballot had been cast. From all this he is protected by the unwritten law that determines his ballot before he is chosen.

It is difficult to feel much force in the charge that the Electoral College is a cumbersome and useless piece of machinery. If the system were abolished, it would abolish only the meeting of the Electors, now fixed by law on the first Monday of the December after their election. The canvass of the vote in the

different States would still remain, attended with increased difficulty. The method of verification, its transmission to some official in Washington, the opening and counting the votes, and official declaration of the result by some one and in some presence, would be as necessary as ever. To the reflecting citizen there is no part of the machinery of our government whose workings are more simple and impressive than this meeting of the Electors. They are few, selected for their weight of character; they assemble simultaneously at the capitols of their respective States to record with deliberation and dignity, and fitting formality, the verdict rendered a month before amid conflicts and political passions that sometimes rock the republic. The contrast, in the presidential election through which the country has just passed, between the trouble and excitement that agitated the public mind during the first week in November, when the Electors were chosen, and that calm acquiescence out of which has sprung increased confidence in the future, pervading all parties a month later, when the Electors assembled to execute the mandate of the people, is a health-giving influence worth much more than it can ever cost. This did not all come of a foregone conclusion. Under all that the certainty to come had worked on human passions and expectations, when the hour of its coming approached, there was a revived faith in our institutions. The mists had passed away, and the structure appeared to all eyes stronger and grander than ever. Men did not go about talking in this strain, but earnest patriots of all parties felt it and were made better citizens by it.

The Electoral College had its origin, not in a distrust of popular government, as is sometimes charged, but in the distinction between a republic of States and a pure democracy; and any substitute for it not based on this distinction, is out of harmony with the other parts of this remarkable whole, and must fail, or compel a change in them also. It was modeled, though imperfectly, after the legislative power, which consists of the House, representing the people, and the Senate, representing the States. It is true that in the joint action of the Senatorial and other Electors in one body much of the power of the State is merged; yet upon the failure of all the colleges to elect by an absolute majority, the States alone make the choice.

A vote by the people directly for President, which keeps up the distinction now existing in the College, based on a republic

of States, would save nothing but the ceremony now performed on the first Wednesday of December following. This is so trifling a gain at most that it is hardly worthy of grave discussion. On the other hand, a vote directly for President, upon a plan which treats the people as one whole, and determines the result by a majority of the entire aggregate of votes in the nation, would neutralize the vote of the smaller States, like Delaware, Rhode Island, and New Hampshire, by equalizing it with that, it may be, of a single county out of fifty in New York or Illinois, and thus extinguish the equality of the States altogether. This, while more democratic, would be a stride toward centralization at war with the whole theory of the government. It does not admit of discussion. The gravest of all charges against the system is, that the execution of its provisions is full of danger. Recent experience and a marvelous deliverance from disaster are too fresh in our memory to need comment. In the recent election, also, a little cloud no larger than a man's hand, and only for a little while above the horizon, filled the land with alarm lest perils once escaped as by a miracle, were coming upon us again. But this danger does not attach itself to the Electoral method more than to any other under our complicated frame-work of national and State governments. The danger lies in the difficulty in verifying the several steps of the process. These steps are indispensable, whatever the method of procedure. It grows out of the fact that the election of a President is in part the work of the State government, and in part that of the nation, each independent of the other in what it does. The State alone appoints the Electors in any manner its legislature may determine, and they meet where the State determines. When they have cast and certified their ballots, State authority over them ceases, and the national begins. What they have done is transmitted under seal to the seat of government of the United States, and delivered to the President of the Senate, who, on a given day, "in the presence of the Senate and the House of Representatives, opens all the certificates."

Who shall determine what persons have been appointed Electors in any State? And who shall pass upon their action after they are appointed? It is very clear that if the State alone has authority to appoint the Electors, the State must determine whom it has appointed. And if what they have done is

to be delivered under seal to the President of the Senate, and is to be by him opened in the presence of the two houses, and the "votes then counted," it is equally clear that from the time the certificate leaves the hands of the Electors in the State to the final declaration of the result, the whole proceeding is national, and controlled by United States officials. But this does not by any means answer all the questions to which these meager and uncertain provisions of the Constitution have given rise. If the President of the Senate is to open all certificates, is he to determine what are certificates? to decide between genuine and false ones? If not the President of the Senate, who is to discharge this important duty? Is it the Senate and the House in whose presence they are to be opened? And if they are to do it, are they to do it as a Senate and a House, by separate and concurrent action, or as one body? Again, if the House is to proceed "immediately," as the Constitution provides, to elect a President when it appears that no choice has been made by an actual majority of the Electors, must not the House, *ex necessitate rei*, then and there itself count the votes to determine its own constitutional duty?

The Constitution nowhere answers these questions, and there is no tribunal authorized to answer them. The States have no tribunal in which a contested election of Electors can be decided. And the United States Constitution has created none to adjudicate those in which the methods of ascertaining and declaring the result are involved. Congress cannot create such a court for the State, nor require it to be done by the State Judiciary, nor even extricate its own government from the doubts these questions raise. These questions are not suggestions of remote possibilities about which the present need not give itself much concern. On the contrary, they but formulate the inquiry that filled the public mind with intense alarm during the uncertainty that hung about the election of 1876, and has created great uneasiness at both elections since. The Electoral Commission was a patriotic device, concurred in at the time by both political parties, to avoid questions that neither could answer. If doubts of a like character shall ever again make the result uncertain, their solution cannot be looked for through any such method, and these questions unanswered may yet wreck the government. The peril that underlies them has been likened by an eminent statesman, now dead, to a "tor-

pedo planted in the straits, with which the ship of state may at some time come into fatal collision." It is the height of folly to shut our eyes to this danger. And it is useless to seek in argument a satisfactory answer to these questions. The public mind will always divide upon them. The only safe solution of the problem is their removal by a Constitutional amendment that shall make plain and simple every step in the process, both State and national, and shall also require or create a tribunal in each State competent to settle finally any possible controversy over the appointment of Electors or their action till the record of what they do reaches some national official. And it should create a like national tribunal to settle every question that can thereafter arise.

The provision that requires an election by an actual majority rather than a plurality in the Electoral College, necessitated the designation of some other body to elect in case of failure on that account. The Constitution clothes the House of Representatives, voting by States, with that function. The two occasions in which that power has been exercised have demonstrated the danger with which it is fraught. Happily, its recurrence is not likely to be frequent, else it is a serious question whether the government could long survive the strain thus brought upon it. Doubtless, a President elected by an absolute majority of the College would enter upon his office with greater moral force behind him than one elected by a plurality only, but the latter will stand stronger and breathe a much purer atmosphere all his official days, than he would if he reached the same position through the devious ways and mephitic breath of a Congressional election. It were much better, therefore, that the amendment embrace, also, a provision substituting a plurality for a majority, and leaving the provision in relation to the House of Representatives applicable only to the remote possibility of a tie in the Electoral College. These amendments accomplished, safety will be secured as far as that can be done by Constitutional safeguards. Whether with these changes the Electoral system should also give place to some new method of more direct election by the people, is of little moment if only this weak point in our system be sufficiently strengthened. Let us not be lulled into further indifference by a too great reliance upon that wisdom and patriotism which has once carried the republic safely through this peril.

H. L. DAWES.

By no difficulty developed in the attempt to organize the Federal Government were the authors of the Constitution more perplexed than by the problem how to choose the President and Vice-President of the United States. Various schemes were propounded for the purpose, only to be successively entertained and rejected. For example: election by the people, election by the national legislature, election by the State legislatures, appointment by the State executives. Eventually, on the eve of the adjournment of the convention, the committee of detail reported a plan for the creation of an intermediate college of Electors, by whom the chief executive officers of the nation should be chosen; and the device was incorporated in the fundamental law of the Union as formulated in Article II. of the original Constitution. In the experiment, however, the method of election here prescribed speedily miscarried, and the twelfth amendment was adopted, to avert another such occurrence as convulsed the country in 1800, when Jefferson and Burr had an equal number of votes for President, and the House of Representatives finally chose Jefferson on the thirty-sixth ballot. That the existing contrivance is vicious in principle and mischievous in operation, and that the choice of President and Vice-President by the immediate will of the nation, voting as a political unit, is the truer and the safer expedient, are the theses that I purpose briefly to maintain.

In a scientific view, any mechanism, material or moral, is decisively condemned by the fact that it misses the end of its creation; and that the present plan of electing the President and Vice-President fails to fulfill an essential function of its institution everybody sees and nobody denies. One, and a principal function, that the College of Electors was designed to perform, was to preclude the people from any direct agency in the election, for the avowed reason that the people are incapable of exercising so delicate and difficult a power as the choice of the chief magistrates of the nation, and because such an office could be better discharged by a select body of commensurate virtue and intelligence. "It would be as natural," said George Mason, "to refer the choice of a proper character to the people, as it would be to refer a trial of colors to a blind man." And, in No. 67 of "*The Federalist*," Hamilton indulged the pleasing anticipation that "the process of election affords a moral certainty that the office of President will never fall to the lot of

any man who is not in an eminent degree endowed with the requisite qualifications"; and asseverated that "it will not be too strong to say, that there will be a constant probability of seeing the station filled by characters preëminent for ability and virtue." He asserted, furthermore, that of all parts of the Constitution, the scheme of choosing the President and Vice-President was precisely that which most commanded applause. It may not abate anything from our admiration of the sagacity of the statesmen who figured in the convention, but it is an indisputable fact that the expedient upon which they so plumed themselves proved, upon trial, a miserable miscarriage. The virtue and intelligence of the Electoral College have no operation in the choice of President; his election is effected by the undisputed, though not unqualified, volition of the people. The constant probability that the station would be filled by the most eminent personages is resolved into the fact that it is attainable only by colorless character and inoffensive mediocrity. Because, then, the existing contrivance for the election of President fails, and fails utterly in one essential particular, to compass the end of its institution, and operates instead to produce the very result it was projected to prevent, it should be discarded as a solecism and an excrescence in our political system. They present no valid argument for its continued existence who urge that, at the most, it is merely a useless and harmless expedient, and that it no way interrupts the operations of the mechanism with which it is incorporated. Even were it an utter abortion, without function or effect, still the simple fact that it is nugatory, that it is a sham, that it accomplishes the very result it pretends to avert, mars the perfection of the system of which it is a part, and discredits the Constitution in the popular regard. But the present plan of electing the President is not wholly abortive; it accomplishes one of its appointed purposes, and, in fulfilling this specific function, it is productive of positive evil.

The constitution of the Electoral College is committed to the State legislatures, with a single important limitation of their power, which is, that the number of Electors shall be "equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress." Representation in Congress being proportioned to population, a number of Electors equal to the number of Representatives would afford a just

measure of the relative influence of the States in the choice of President; but this natural and equitable ratio is neutralized by the allotment to each State of two Electors who stand for nothing but the sterile abstraction of State sovereignty. Avowedly this provision was designed to destroy the legitimate and just ratio between political power and the number of voters, was intended to arm the smaller States with an influence in the election of President disproportionate to their relative population; and such is its effect. In the recent election, the States of New England cast thirty-eight votes, while but thirty-six were given by New York; and yet the population of those States is one-third less than the population of New York. Furthermore, it has happened repeatedly, that a President has been chosen against the vote of the popular majority; another result of this arbitrary addition to the electoral weight of the States, coöperating with the principle of the system presently discussed. That this provision is, in theory, repugnant to the genius of popular government, is self-evident. The rule of the majority is the fundamental principle of popular government, because it is the only principle that recognizes the equality of men; a postulate upon which all popular government proceeds. And this principle is vindicated by philosophical speculation. Rutherford says:

“It is plainly most consistent with reason, that the sentiments of the majority should prevail and conclude the whole; because it is not so likely that a greater number of men should be mistaken when they concur in their judgment as that a smaller number should be mistaken. And this is likewise most consistent with equity; because, in general, the greater number have proportionately greater interest that the purposes of society should succeed well, and have more at stake if those purposes should miscarry or be disappointed.”—“*Institutes of Natural Law*,” II., 1, Sec. 1.

However this may be, certainly the theory of American government reposes upon the principle of the rule of the majority; and in so far as the provision under review challenges and crosses this principle, it is repugnant to the genius of popular government. The important control in the Federal administration that is imparted by the provision to the smaller States, is evident upon a view of the powers of the executive—its qualified veto upon legislation, its prerogative of appointment to office, and its treaty-making power. The effect of the arrangement in giving to the smaller States a factitious weight in the election of President, will doubtless commend it to the judgment of the sticklers

for State sovereignty; but independently of this provision for an equal Senatorial representation in the Electoral College, the smaller States are already armed with an adequate power of self-protection and a disproportionate influence upon the operations of government. By their equality of representation in the Senate, of which they cannot be deprived but by their own consent, they have an equal weight in legislation with the larger States, to the full effect of which consideration it is requisite to remember that the Senate may exert an absolute negative upon legislation. Then, too, by virtue of this equal Senatorial representation, the smaller States participate equally with the largest in all the executive and judicial powers of the Senate, in the appointments to office, in concluding treaties, and in the determination of impeachments. In respect of all these important matters, Nevada stands on a level with the imperial commonwealth of New York. It is, then, a frivolous apprehension to object that the interests of the smaller States would be endangered by depriving them of their artificial and unequal weight in the election of President.

Another principle of the electoral system, which, in coöperation with the arbitrary allowance of two votes to each State, without reference to population, has been indicated as contributing to the defeat of the popular will in the election of President, is this: in the election the States vote as political units, so that the minority vote in each State is annihilated, and is ineffectual to influence the general result. Thus it might happen that the Southern States, voting with New England and Indiana for the same candidate, and giving him a bare plurality of the popular suffrage, would elect him, against the competition of another candidate supported by all the other States with an overwhelming majority of the popular vote; and so the President of the United States would represent a comparatively small minority of the whole people. But this result would not occur if the event depended upon the vote of the entire nation; for then the minority vote of each State would weigh in the balance of the total suffrage. The present mode of electing a President involves the method of voting by composite units, a principle of which the tendency is to defeat the operation of the numerical principle. The device was not original with the authors of the Constitution, but had been successfully employed in the *Comitia Tributa*, and

under the Constitution of Servius, to neutralize the vote of the mass of Roman citizens, and to insure the ascendancy of favored classes. It had been found efficient, too, in the councils of Constance and Basle, to defeat a decision by the numerical majority. The same principle was incorporated in the Confederation of 1781, and legitimately enough, because the Confederate States were in no sense a nation, but a league of sovereign commonwealths, and it was logical that in the general council the vote of each State should operate with the weight of an independent unit. But now we are a nation, and the voice of the entire nation should be audible and potent in the election of the executive chief of the nation.

In each State the Electors may be chosen in any way the State legislature may be pleased to prescribe. Wherefore, whatever interest or oligarchy might chance for the time to be prevalent in the legislature of a State, would have the power, as it certainly would have the will, to make such provision for the choice of Presidential Electors as would promote any occasional interest of class or object of party, however incompatible with the general welfare of the nation. The history of New York furnishes an instance of the possible subserviency of State legislatures to party intrigue in the choice of electors, in the attempt, made on the suggestion of Hamilton, to alter abruptly the mode of their appointment to serve the interests of a defeated faction—an attempt that, but for the incorruptible integrity of John Jay, would have been successful. A plan of choosing the chief magistrate of the republic, which depends upon the State legislatures to determine the constituency by whom ultimately he shall be elected, which may be worked in subserviency to partial and transient interests, to the national detriment, and which leaves with the legislatures of the States power even to deprive a State of any participation in the election of President,—such a scheme, independently of its experienced effects, cannot survive the *a priori* logic of a sound political philosophy.

If, then, the existing method be indefensible in theory and pernicious in practice, it should be replaced by a plan, if such can be devised, more in harmony with the genius of our institutions, and more conducive to the public welfare. And it results from the principles on which this criticism proceeds, that the true and the expedient mode of choosing the chief

magistrate of the nation is by the popular vote of the nation. As an officer of a distinct and independent government, his appointment should not be contingent upon the will or action of the States. As a representative of the might and majesty of the American people, he should be the immediate elect of the American people. Exposed, as the executive must be, to encroachment on its prerogatives by legislative usurpation, he should be sustained by whatever moral power may be imparted by the declared confidence and support of the people. As the representative chief of the nation in its unity, he should embody the national will in its unity. Since the rule of the majority is an equivalent term for popular government, and since, in the American system of political philosophy, the voice of the majority is the voice of all, his election should be suspended on the event of the majority vote, unaffected by any arrangement inconsistent with the effectual expression of that majority. And so thought the sages of the Convention; the present contrivance for the choice of President being the desperate makeshift of discordant interests and counsels; while Morris, Madison, Wilson, Dickinson, and Carroll favored the election of President by the people.

ROGER A. PRYOR.

A SUGGESTION is making itself felt in the public mind as to the propriety of repealing the Electoral system. The Constitution of the United States has been in existence nearly one hundred years, and within that period almost every feature of it has felt the friction of actual experience, sufficient to test its strength and its fitness. The Electoral system of choosing a chief magistrate has been subjected to this test more frequently perhaps than any other feature of the Constitution about which any question has been made. Twenty-two Presidents have been chosen under it, several of them twice. Although it was conceived and inaugurated so long ago, in the golden age of American patriotism and simplicity, when there were but thirteen States in the Union, possessed of only 820,000 square miles of territory, and occupied by not more than 3,000,000 people, it has been operative through our amazing increase in wealth, our vast growth in population, our mighty enlargement of ter-

ritory, and all the revolutions of our society. So it may be said that it has been thoroughly tested by all phases of our politics. Yet in no case has it been seriously impeached, in no instance has it ever been accused as the cause of any of our troubles or dangers.

The charge that it is a useless and unnecessary piece of political machinery, at first blush appears to be true. It would, indeed, seem to be a superfluous thing to vote for a man in order to have him in turn vote for the President of your choice, when you could seemingly as well vote for him directly yourself. But our ancestors were not guilty of this folly. The Electoral College is not now, by any means, the thing that they designed it to be. The original purpose was to make it an independent body, with absolute power to select a President and Vice-President of their own choice, by their own wisdom, without reference to the wishes of parties or any one else. The debates in convention and cotemporary criticism, as well as the first few years of the government's existence, show this.

The anxiety of the Constitution-makers seems to have been so to provide for these elections as to avoid the tumultuous passions of the mob on the one hand, and, on the other, the corrupting influences to which, it was supposed, a smaller body would be subjected. The chief propositions as to the manner of electing the President were, first, by the people directly, then by the House of Representatives, then by the whole legislative body, and lastly, by Electors chosen by the States for that purpose. Many and serious objections were made to all these methods; but finally, after much hesitation and many changes of opinion, the present plan was adopted. Many precautions were taken to make their choice free and unbiased. The Electors were to be chosen by the States in such manner as each State should direct; they were forbidden to have any official connection whatever with the United States; they were to be chosen for the sole and special purpose of electing a President and Vice-President, and they were themselves to expire officially the moment that duty was performed. They were to assemble, for that purpose, in the capitols of their respective States, on the same day, and cast their votes immediately, without consultation, or the opportunity therefor, with the Electors of any other State. In this view, it cannot be truthfully said that our fathers provided a useless or absurd

institution. They gave us, on the contrary, a very wise and well-guarded arrangement for the selection of chief magistrate. The departure came in a manner entirely unlooked for by them. It is a striking commentary upon their undoubted wisdom, that they should have failed altogether to foresee the most palpable and inevitable of all the results of their contrivance, the one that now furnishes the pretext for its repeal, and that was the almost immediate drifting away from their original purpose of selecting independent, highly empowered Electors, and the modern conversion of them into mere registers of the popular will. So far as I can perceive from the debates, they made no prediction whatever of the rapid growth and power of parties in our politics, and of the force of that fierce democracy which was to burst through all forms and restraints in the assertion of its will. Now, though every line and word of the Constitution in regard to this matter stands just as the fathers left it, the candidates for Electors in all the States have the names of the proposed President and Vice-President for whom they are to vote inscribed above their own on the popular ballots; and they would no more think of voting for any other candidates than they would think of committing suicide.

It is this reduction of the Electoral College to the condition of being the mere mouth-piece of the majority that makes the system appear useless. But is it worth while to abolish it for no other and better reason? Is not this call for a change simply the utterance of the practical and direct spirit of the times? Should we yield to that spirit, without some cause over and above the mere business instinct? Are all forms hurtful and useless? Is it not possible that a day may come, and come soon, when the safety of the republic may require the assertion of the original, independent powers of the Electoral College? And should that day never come, is that other day likely to arrive when the Electoral College, as at present used, can possibly do us any harm? In my opinion, the forms instituted by the framers of the Constitution are something more than mere forms. They are important aids in the organization and continuity of the functions of government. Like the many ceremonials and indirections of the common law, which were all founded on good and sufficient reasons, those of the Constitution were based on some supposed necessity of free government. Generally, all checks upon hasty, or corrupt, or in anywise im-

proper legislation or political action, are of essential service to good government. They are eminently conservative; with us they are adjuncts to stability, if not stability itself. I believe it highly probable that our future may produce occasion for the interposition of the independent powers of dispassionate Electors to prevent anarchy or despotism. From the closing of a fierce presidential contest, to the time of the meeting of the chosen Electors, there always comes a great calm, a blessed cooling-time. At such a moment reason and patriotism would have opportunity to rally and do their saving work, should the republic be in danger. Here, in many cases easily supposed, these temporary repositories of popular power might save our country from disruption, and bloodshed, and anarchy. The Electoral College is an anchor that may yet hold the ship when all other cables have parted. That possibility surely makes it worth the space it occupies on the deck. So long as it is used as it has been for the past sixty years, as the mere instrument for announcing the will of the majority, it cannot possibly be deemed any restriction upon popular suffrage, or have the slightest effect in preventing the full force of a single ballot. For if it should be abolished, as proposed, the effect and weight of each individual vote would neither be increased nor diminished. There is no proposition, that I remember, to change the influence of the States by consolidating the total votes of the Union, abolishing all State lines, and making an election depend upon a majority of this aggregated vote. Such a proposition would be absolutely inadmissible, and I presume is not seriously entertained by the most extreme consolidationist.

We should be very careful how we change any of these original provisions, even those that appear to be mere forms. The ceremonials intended either to secure or celebrate the liberties, valor, or wisdom of a people, are the last things they will surrender. The consuls, the great chief magistrates of Rome, represented the majesty of the people of the republic established by the elder Brutus, after the expulsion of the kings. They continued to be regularly elected and inaugurated long after their functions had been usurped by the emperors, and the office was but a shadow. "But the tradition of ancient dignity," says Gibbon, "was long revered by the Romans and barbarians, . . . and at the end of a thousand years two consuls were created by the sovereigns of Rome and Constantinople, for the

sole purpose of giving a date to the year and a festival to the people." So conservative at heart are the masses.

The Electoral College was given us by the wisest and purest statesmen connected with our country's history; to them, more than to all others, we have been taught to attribute the chief glory and excellence of our institutions; and, unless it can be shown that it is hurtful to the people's liberties, it ought to be many a year before it is abolished to appease a senseless clamor. The real and ever-present danger to our country's peace lies in the methods of ascertaining and pronouncing what Electors are actually chosen by the people, and not in the Electors themselves. This, it is needless to say, is the business of the States, to the honesty and accuracy of which they should look all the more vigilantly because, though their Electors are in the strictest sense State officers, yet they, more than all others, nearly concern the whole people of the Union.

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